

STD

**U.S. District Court**  
**DISTRICT OF ARIZONA (Phoenix Division)**  
**CIVIL DOCKET FOR CASE #: 2:12-cv-00083-DGC**  
**Internal Use Only**

TSI Incorporated v. Azbil BioVigilant Incorporated  
Assigned to: Judge David G Campbell  
Cause: 35:271 Patent Infringement

Date Filed: 01/13/2012  
Jury Demand: Plaintiff  
Nature of Suit: 830 Patent  
Jurisdiction: Federal Question

**Plaintiff**

**TSI Incorporated**  
*a Minnesota corporation*

*Pat. # 6,831,279*

represented by **Ahron David Cohen**  
Snell & Wilmer LLP - Phoenix, AZ  
1 Arizona Center  
400 E Van Buren  
Phoenix, AZ 85004-2202  
602-382-6731  
Email: [acohen@swlaw.com](mailto:acohen@swlaw.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Andrew Foster Halaby**  
Snell & Wilmer  
1 Arizona Ctr  
400 E Van Buren  
Phoenix, AZ 85004-0001  
602-382-6000  
Fax: 602382-6070  
Email: [ahalaby@swlaw.com](mailto:ahalaby@swlaw.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**David J.F. Gross**  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Kenneth Arthur Liebman**  
Faegre & Benson LLP  
2200 Wells Fargo Ctr  
90 S 7th St

Minneapolis, MN 55402  
 (612)766-7000  
 LEAD ATTORNEY  
 ATTORNEY TO BE NOTICED

**Timothy E Grimsrud**  
 LEAD ATTORNEY  
 ATTORNEY TO BE NOTICED

V.

**Defendant**

**Azbil BioVigilant Incorporated**  
*a Delaware corporation*

Date Filed	#	Docket Text
01/13/2012	1	COMPLAINT. Filing fee received: \$350.00, receipt number PHX 0970-6273326, filed by TSI Incorporated (submitted by Ahron Cohen). (Attachments: # 1 Exhibit, # 2 Civil Cover Sheet)(REK) (Entered: 01/13/2012)
01/13/2012	2	SUMMONS Submitted by TSI Incorporated (submitted by Ahron Cohen). (Attachments: # 1 Summons)(REK) (Entered: 01/13/2012)
01/13/2012	3	Corporate Disclosure Statement by TSI Incorporated identifying Corporate Parent JJF Group Incorporated, Corporate Parent Churchill Companies for TSI Incorporated (submitted by Ahron Cohen). (REK) (Entered: 01/13/2012)
01/13/2012	4	Filing fee paid, receipt number PHX 0970-6273326. This case has been assigned to the Honorable David G. Campbell. All future pleadings or documents should bear the correct case number: CV 12-00083-PHX-DGC. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (REK) (Entered: 01/13/2012)
01/13/2012	5	Summons Issued as to Azbil BioVigilant Incorporated. (Attachments: # 1 Summons Statutory Agent)(REK). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 01/13/2012)

1 Andrew F. Halaby (#017251)  
2 ahalaby@swlaw.com  
3 Ahron D. Cohen (#028602)  
4 acohen@swlaw.com  
3 **SNELL & WILMER LLP**  
4 One Arizona Center  
400 East Van Buren Street  
5 Phoenix, AZ 85004-2202  
5 Telephone: (602) 382-6000  
6 Fax: (602) 382-6070  
6  
7 Kenneth A. Liebman (Minn. No. 236731)  
7 (motion for *pro hac vice* to be filed)  
ken.liebman@FaegreBD.com  
8 David J. F. Gross (Minn. No. 208772)  
8 (motion for *pro hac vice* to be filed)  
david.gross@FaegreBD.com  
9 Timothy E. Grimsrud (Minn. No. 34283X)  
10 (motion for *pro hac vice* to be filed)  
tim.grimsrud@FaegreBD.com  
11 **FAEGRE BAKER DANIELS LLP**  
12 2200 Wells Fargo Center  
12 90 South Seventh Street  
13 Minneapolis, Minnesota 55402-3901  
13 Telephone: (612) 766-7000  
14 Fax: (612) 766-1600  
14  
15 Attorneys for Plaintiff  
15 TSI, Incorporated

16 **UNITED STATES DISTRICT COURT**  
17  
18 **DISTRICT OF ARIZONA**

19 TSI, Incorporated, a Minnesota  
20 corporation,

Civil No. \_\_\_\_\_

21 Plaintiff,  
22  
23 vs.  
24 Azbil BioVigilant, Inc., a Delaware  
25 corporation,  
26  
27  
28 Defendant.

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Snell & Wilmer  
L.L.P.  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

1 Plaintiff TSI, Incorporated (“TSI”), for its Complaint against Defendant Azbil  
2 BioVigilant, Inc. (“BioVigilant”), formerly known as BioVigilant Systems, Inc., alleges as  
3 follows:

4 **PARTIES**

5 1. Plaintiff TSI is a corporation organized and existing under the laws of the  
6 state of Minnesota, with its principal place of business at 500 Cardigan Road, Shoreview,  
7 MN 55126.

8 2. On information and belief, Defendant BioVigilant is a corporation organized  
9 and existing under the laws of the state of Delaware, with its principal place of business at  
10 2005 W. Ruthrauff Road, Suite 151, Tucson, AZ 85705, and with its domestic address, as  
11 listed by the Arizona Corporation Commission, at 2015 W. Ruthrauff Road, No. 153,  
12 Tucson, AZ 85705.

13 3. BioVigilant is believed to have received significant funding from Alerion  
14 Capital Group, LLC, which is located in Scottsdale, AZ. One of BioVigilant’s directors  
15 also is listed with the Arizona Corporation Commission as having an address at Alerion  
16 Capital Group, LLC, in Scottsdale, AZ.

17 4. On information and belief, in or about 2009, Tokyo-based Yamatake  
18 Corporation of the azbil Group acquired a majority interest in BioVigilant and is currently  
19 the majority or sole owner of BioVigilant.

20 5. On January 5, 2012, BioVigilant announced that it changed its name from  
21 BioVigilant Systems, Inc. to Azbil BioVigilant, Inc. According to BioVigilant’s  
22 announcement, the change reflects the company’s alignment with its corporate parent,  
23 Yamatake Corporation of the azbil Group.

24 6. On information and belief, the azbil Group’s head office in the United States  
25 is in Phoenix, AZ, at 9033 N. 24th Ave., Suite 6, which is also the address of Azbil North  
26 America, Inc.

27  
28

Snell & Wilmer  
L.L.P.  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2702  
(602) 382-6000

## **JURISDICTION AND VENUE**

7. The claims alleged herein arise under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over BioVigilant, because BioVigilant  
engages in continuous and systematic business activities in this district. On information  
and belief, BioVigilant has also made, sold, used, and/or offered to sell products in this  
district that are accused of infringing the patent-in-suit.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and  
(c), and 1400(b).

**PATENT-IN-SUIT**

13        11. On December 14, 2004, United States Patent No. 6,831,279 ("the '279  
14 patent"), entitled "Laser Diode-Excited Biological Particle Detection System," was duly  
15 and legally issued by the United States Patent and Trademark Office. A true and correct  
16 copy of the '279 patent is attached as Exhibit A.

17        12. TSI owns the '279 patent, having acquired all right, title and interest from  
18 the initial assignee, Her Majesty the Queen in right of Canada, as represented by the  
19 Minister of National Defence ("Canada"), through an assignment from Canada. TSI's  
20 rights to the '279 patent acquired from Canada include the rights to sue for past  
21 infringement and to all damages for past infringement of the '279 patent.

22 13. Before acquiring the '279 patent TSI licensed the '279 patent from Canada.

## **COMPLIANCE WITH 35 U.S.C. § 287**

24 14. TSI makes and sells biological particle detection systems that are embodied  
25 by one or more claims of the '279 patent.

26 15. TSI has complied with 35 U.S.C. § 287(a) by marking its products with the  
27 '279 patent.

16. BioVigilant was also given actual notice of the '279 patent.

## **CLAIM FOR RELIEF FOR PATENT INFRINGEMENT**

17. TSI realleges and incorporates by reference paragraphs 1 through 16 as if fully stated herein.

18. BioVigilant has knowledge of the '279 patent.

6 19. BioVigilant and Yamatake Corporation (acting on behalf of BioVigilant)  
7 have sought a license to the '279 patent from Canada and TSI. Yamatake Corporation  
8 specifically sought a license to the '279 patent that would extend not only to BioVigilant,  
9 but also to Yamatake Corporation and Azbil North America, Inc. TSI declined to grant  
10 any license to BioVigilant, Yamatake Corporation, Azbil North America, Inc., or any  
11 other affiliate and/or member of the azbil Group.

12 20. On information and belief, BioVigilant markets and sells biological particle  
13 detection systems, including, for example, the IMD-A series (such as the IMD-A 200-1;  
14 IMD-A 220-4; IMD-A 300; and IMD-A 350).

15 21. On information and belief, BioVigilant's biological particle detection  
16 systems, including, for example, the IMD-A series (such as the IMD-A 200-1; IMD-A  
17 220-4; IMD-A 300; and IMD-A 350), are covered by at least one claim of the '279 patent.

18        22. Accordingly, on information and belief, BioVigilant has infringed and is  
19 directly infringing, actively inducing others to infringe, and/or contributing to the  
20 infringement of the '279 patent by making, using, importing into the United States,  
21 offering to sell, and/or selling biological particle detection systems, including, for  
22 example, the IMD-A series (such as the IMD-A 200-1; IMD-A 220-4; IMD-A 300; and  
23 IMD-A 350), in this district and elsewhere in the United States, in violation of 35 U.S.C.  
24 § 271

25        23. On information and belief, BioVigilant's infringement of the '279 patent has  
26        been and will continue to be willful.

24. On information and belief, BioVigilant will continue to directly infringe, actively induce others to infringe, and/or contribute to the infringement of the '279 patent unless and until BioVigilant is enjoined by this Court.

25. As a result, TSI will be damaged and will be irreparably injured unless and until BioVigilant's infringing activities are enjoined by this Court.

## **PRAYER FOR RELIEF**

WHEREFORE, TSI respectfully requests this Court:

A. To enter judgment that BioVigilant has infringed the '279 patent in violation of 35 U.S.C. § 271;

10 B. To enter judgment that BioVigilant's infringement of the '279 patent is  
11 willful.

12 C. To enter orders enjoining BioVigilant, and its respective officers, agents,  
13 servants, and employees, and attorneys, and all persons in active concert or participation  
14 with any of the foregoing, who receive actual notice by personal service or otherwise of  
15 the orders, from infringing the '279 patent in violation of 35 U.S.C. § 271;

16 D. To award TSI its damages in amounts sufficient to compensate it for  
17 BioVigilant's infringement of the '279 patent, including enhanced damages for willful  
18 infringement, together with pre-judgment and post-judgment interest and costs, pursuant  
19 to 35 U.S.C. § 284;

20 E. To declare this case to be “exceptional” under 35 U.S.C. § 285 and to award  
21 TSI its attorneys’ fees, expenses, and costs incurred in this action; and

22 F. To award TSI such other and further relief as this Court deems just and  
23 proper.

**DEMAND FOR JURY TRIAL**

25 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, TSI respectfully  
26 requests a trial by jury of any and all issues on which a trial by jury is available under  
27 applicable law.

1 DATED this 12<sup>th</sup> day of January 2012.

2 SNELL & WILMER L.L.P.

3 By: s/Ahron D. Cohen  
4 Andrew F. Halaby (#017251)  
5 Ahron D. Cohen (#028602)  
6 One Arizona Center  
7 400 East Van Buren Street  
8 Phoenix, AZ 85004-2202

9 Kenneth A. Liebman (Minn. No. 236731)  
10 (motion for *pro hac vice* to be filed)  
11 ken.liebman@FaegreBD.com  
12 David J. F. Gross (Minn. No. 208772)  
13 (motion for *pro hac vice* to be filed)  
14 david.gross@FaegreBD.com  
15 Timothy E. Grimsrud (Minn. No. 34283X)  
16 (motion for *pro hac vice* to be filed)  
17 tim.grimsrud@FaegreBD.com  
18 **FAEGRE BAKER DANIELS LLP**  
19 2200 Wells Fargo Center  
20 90 South Seventh Street  
21 Minneapolis, Minnesota 55402-3901  
22 Telephone: (612) 766-7000  
23 Fax: (612) 766-1600  
24  
25 Attorneys for Plaintiff  
26 TSI, Incorporated  
27  
28

14296443

Snell & Wilmer  
LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000